



CITY OF MANCHESTER

PLANNING AND COMMUNITY DEVELOPMENT

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MANCHESTER ZONING BOARD OF ADJUSTMENT PUBLIC HEARING / BUSINESS MEETING MINUTES Thursday, May 12, 2022– 6:00 p.m.

Board Members Present: Chairman Robert Breault, Vice Chairman Michael Simoneau, Joe Prieto

Alternates Present: Guy Guerra, Anne Ketterer

Excused: Jose Lovell, Greg Powers

Absent: Jim Roy

City Staff Present: Michael Landry, Deputy Director of Building Regulations
Sheila McCarran, Administrative Assistant II

I. The Chairman calls the meeting to order and introduces the Zoning Board Members and City Staff.

Michael Landry announced that the owner of 149 Exchange Avenue, case #ZBA2022-037, David Marchand, requested that his case be postponed to the June 9, 2022 ZBA Meeting. Mr. Landry said the applicant has not been able to get the documentation that this Board has asked for. This case will be heard on June 9, 2022 at 6:00 pm here in the Aldermanic Chambers. No further notice will go out to abutters.

II. PUBLIC HEARING:

(Tabled from 3/10/2022 ZBA Meeting)

Mr. Landry said before he reads the next case into the record, the Board should take an action to remove it from the table. He said he would just like to say that he thinks Mr. Lora has submitted the information that the Board was looking for.

Michael Simoneau made a motion to remove case ZBA2022-023 from the table, which was seconded by Guy Guerra.

Yeas: Breault, Simoneau, Prieto, Roy,
Nays: None

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Upon a unanimous vote, case ZBA2022-023 was taken off the table.

1. **ZBA2022-023**
253 Lake Avenue, R-3 Zoning District, Ward 5

Raphael Lora proposes to erect two wall signs where one is 22' W x 7' H and the other sign is 12' W x 2' H, as well as maintain a 4' W x 3' H free standing sign within 5' of the property line and seeks a variance from sections **9.08 Signs In Residential Districts** (2 counts) and **9.09 Free Standing Sign**, of the Zoning Ordinance of the City of Manchester, New Hampshire, as per documents submitted through April 29, 2022.

Chairman Breault asked Mr. Landry if he added a count. Mr. Landry said he added a count for the free standing sign that wasn't identified at the last hearing and he believes that Mr. Lora also eliminated one of the wall signs that was placed from column to column that the Board struggled with.

Raphael Lora said he decided to remove that sign and he would like to erect a 22' wide by 7' high sign on the left side of the wall. He said this is consistent of their picture of a family doing laundry and he believes that will improve not only the good look of the building, but also improve the look of the neighborhood. He said the second sign is by the entrance and is 12' x 2' and it is just the name of the store. The third one, which is the free standing one, they intend to put some of the services that they offer. Basically this is his request and this is an essential part of the business.

Chairman Breault turned the hearing over to the Board.

Chairman Breault asked if the 22' x 7' sign would still be going column to column or is that going to be on the building. Mr. Lora said he thinks the left part of the wall. There are no columns there. It is the brick wall. It is not on the right side, it is on the left side and there are no columns there, it is just a wall. Chairman Breault said initially, Mr. Lora wanted to put the sign on the columns and now he has moved it to the left where the windows are. Mr. Lora said correct.

Mr. Landry said this is an entirely different sign. He said the sign that we are talking about, the 22' wide one is the photograph, which is considered a sign because it is depicting laundry being done and more or less indicating it is a laundromat, it is considered a sign.

Chairman Breault turned the hearing over to the public and invited those in favor of or in opposition to this application or those with general comments to come forward. No one came forward to this request and the Chairman turned the hearing back over to the Board.

Mr. Landry said he didn't find any permit history for the free standing sign, but certainly it has been there a while. It is in one of the photographs. He said Mr. Lora wants to reface it but the pole is bent. He said he is just bringing that to the Board's attention and maybe the Board would maybe want to see that straightened out in some way. Mr. Lora said he will definitely make it straight. Chairman Breault said he thinks it would behoove Mr. Lora to make it look a little better. He said it must have gotten hit by something. Mr. Lora said that was correct. Chairman Breault asked Mr. Lora if the 12' x 2' sign was going over the door, the same one

that is going to the right of the other one. Mr. Lora said by the entrance, yes.

Chairman Breault said he thinks this is more tasteful than the original application and he would be in favor of this.

Anne Ketterer said the previous application showed a sign spanning the columns. She asked if that was gone. Chairman Breault said that is gone.

Vice Chairman Simoneau referred to the plan and asked Mr. Lora if this was what is going to replace that standing sign which is going to be straightened out. Mr. Lora said that was correct and it was going to be straightened out and it is going to be 4' x 3'.

Joe Prieto asked Mr. Lora if he still had the straight up sort of flag sign. Mr. Lora said yes, that was already approved on the right side but he would like to make some on the left where really, the store is. He would like to make it look better on the left side. Mr. Prieto said then the the flag banner sign is still going to be there. Mr. Lora asked Mr. Prieto if he meant the banner sign because the banner is gone. He is not going to use the banner anymore. Mr. Prieto said he thought Mr. Lora had a stand up one with a flag and asked him if that was gone. Mr. Lora said no, that was approved already. He said that was the only one that was approved, that is a vertical by the right side.

Chairman Breault said he thinks Mr. Prieto is referring to the banner that Mr. Lora has stuck into his lawn. Mr. Lora said that is a temporary sign that he can remove. Mr. Landry said it is temporary and the Ordinance does speak to that. Mr. Lora said he can remove that.

Vice Chairman Simoneau thanked Mr. Lora for addressing those issues that the Board had last month. He said he agrees with Chairman Breault that it is what the Board was looking for.

Michael Simoneau made a motion to grant the following variance counts for case ZBA2022-023, 9.08 Signs In Residential Districts (2 counts) and 9.09 Free Standing Sign which was seconded by Anne Ketterer.

Yeas: Breault, Simoneau, Prieto, Guerra, Ketterer

Nays: None

Upon a unanimous vote, the variance was granted.

(Tabled from 4/14/2022 ZBA Meeting)

Guy Guerra made a motion to remove case ZBA2022-025, from the table, which was seconded by Joe Prieto.

Yeas: Breault, Simoneau, Prieto, Guerra, Ketterer

Nays: None

Upon a unanimous vote, case ZBA2022-025 was removed from the table.

2. **ZBA2022-025**
54 Windswept Road, R-1A Zoning District, Ward 6

Steven and Theresa Kavalek propose to convert 484 SF of an attached garage to an owner occupied beauty salon with no employees and create two parking spaces for beauty salon clients and seek a variance from sections **8.25(B)** Home Occupation Beauty Shop and **10.02(F)** Business Parking in Residential District, of the Zoning Ordinance of the City of Manchester, New Hampshire, as per documents submitted through March 7, 2022.

Attorney Daniel Muller from Cronin, Bisson and Zalinsky said he was here on behalf of the Kavaleks who were with him tonight. He said as the Board is aware, this was here back in April. There were some issues that came up, specifically with respect to the hardship element as well as the operation of the business, particularly a second chair. He said he wants to address those as part of the presentation tonight. Specifically, the proposal here is for a very limited salon business. He said his client has approximately thirty to fifty clients total who are mostly friends and family. At peak, we are talking about eight to ten clients a week. Again, peak per day is usually about three. The proposed hours of operation are from 10:00 am to 5:00 pm, Tuesday through Saturday. Part of the reason for that is his client has family obligations in the afternoon and has to have some flexibility in that regard.

Attorney Muller said as he indicated, currently, the salon would have two chairs. As the notice indicates, there would be no other employees and if the Board wants a condition to that affect, they would not object to that. With respect to why they have the two chairs, they happened to buy them together, but from a business standpoint, he thinks there was some confusion about this the last time. He said one chair would be used for what they so call dry services, cutting hair and things of that nature. Materials, etc., for that would be placed with that chair. For so called wet services, such as make-up and the like, that would be used for the other chair. Again, if there is a concern that they will have multiple clients at a time, his clients would not object to a condition similar to what the Ordinance imposes with respect to home occupations versus involving teaching, particularly musical instruments that limits to one person at a time. He said they don't have a problem with doing that so that there is no concern long term that this is going to expand beyond the sort of limited operation that is described here. There is still no proposal for any signage. This will simply look like a garage from the outside.

Attorney Muller said another issue that came up during the last hearing was that of hardship. As the Board knows, with respect to hardship, you are looking for conditions of the property that distinguish it from others in the neighborhood that make the use reasonable. Here, they are looking to make use of the garage for a home occupation. Unlike a lot of the other properties in this area, if you have driven through the area, most of the garages face the front, so any parking, including for clients, would be in the front yard. He said as the Board well knows, the Ordinance limits front yard parking here because in this particular case, the garage turns to the side and you can have compliant parking for both residents and patrons on this particular property. Given the characteristics of the property, as well as the fact that the proposal here, again with no signage and very limited cliental, this sort of fits into the idea of what a home occupation would be. Obviously, he has been before this Board enough times to know that, with salons, frequently the concern is parking for patrons, and again, if you look at the counts here, there is not an additional count that they had to put spaces outside of where

they are allowed. They are in the side yard where they are allowed. Attorney Muller said he would also note for the record that there should be some letters of support from a couple of abutters here.

Chairman Breault turned the hearing over to the Board. There were no questions or comments from the Board and the Chairman turned the hearing over to the public and invited those in favor of or in opposition to this application or those with general comments to come forward. No one came forward to this request and Mr. Landry said he had letters to read into record. He said he would read the two letters in favor first.

We, Jared and Julie Pellerin of 67 Windswept Road in Manchester have reviewed Steve and Theresa Kavalek's proposal to convert an attached two-car garage into a hair salon and do not oppose this proposal.

Mr. Landry said there was a similar letter from Alejandro Raya and Elizabeth Fouts and he read it into record.

We, Alejandro Raya and Elizabeth Fouts of 29 Lady Slipper Lane, next door to 54 Windswept Road have reviewed Steve and Theresa Kavalek's proposal to convert an attached two-car garage into a hair salon and do not oppose this proposal.

Mr. Landry said the next letter is from residents at 53 Windswept Road and they write:

We, the residents at 53 Windswept Road wish to express our concerns for the proposed business at 54 Windswept Road.

Currently, the Brookfield neighborhood does not have any "in home" businesses. It is a family neighborhood with minimal traffic of the current residents and occasional visitors, and we would very much like to see it remain so.

The conditions of the property at 54 Windswept Road are unfavorable. Their driveway houses 2 trucks, 1 car and a 1 very large camper. During the summer, the car is parked on the street to allow room for the camper, which at this time is parked in the rear of the home to dissuade any possibility of the permit not to be approved. There is absolutely no parking space availability for patrons to visit this proposed beauty salon.

There are multiple young families in the neighborhood with children that do play in the street under the watchful eye of their parent(s). We do not need additional traffic to come thru this neighborhood.

Please take our concern under advisement.

Respectfully,

***Michael and Jennifer Robidoux
53 Windswept Road
Manchester, NH 03109***

Mr. Landry said the next letter is from Richard and Connie Adams of 68 Windswept Road and he read it into record.

We are reaching out to the Zoning Board of Adjustment with respect to the ZBA2022-025-54 Windswept Road Application that has been brought before your Board. We are Richard and Connie Adams and we reside at 68 Windswept Road making us a direct abutter to the applicant. In fact, we share a side yard property line that runs parallel to the existing driveway of the applicant. We are writing to be put on record and for our concerns to be considered by the Board as you contemplate the application.

Our review of the application has resulted in the following concerns and observations:

- 1. The Zoning Ordinances clearly state that a Beauty Salon is expressly prohibited as a home occupation in the R-1A Zone. The applicant points out that precedent has been set in other neighborhoods. We do not live in the other neighborhoods and with two other salons within two miles, as documented by the applicant, why do we need to allow for another unallowable use in such close proximity to the other salons, and in a medium density zoned residential development? This unallowable use would be better suited in a zoning district that allows for commercial uses.*
- 2. The applicant is looking to convert the 484 SF garage into a beauty salon. The floor plan for the renovation shows as many as three chairs for serving customers. The application states that Theresa Kavalek will be the only employee. It is unclear as to why a salon with three chairs is required for one employee only serving family and friends. This implies additional employees and a larger operation than the application states. As such, this provides concern with respect to scale within a residential neighborhood, parking needs, and increased traffic patterns not related to typical single family home living in a residential neighborhood.*
- 3. Allowing for the use variance would also require a limited activity buffer of 50-ft be enforced along our shared property line by Ordinance section 6.08B for parcels used for non-residential purposes within residential districts. This is of significance, especially should the board approve this application, as we and the other residents on Windswept Road do not wish to see any signs or any additional outdoor storage of anything related to a salon either now or in the future.*
- 4. The applicant does not appear to meet the variance criteria:*
 - a. The requested use of the existing garage will alter the character of the neighborhood. All of the homes in the development have garages for indoor storage of vehicles. The applicant currently stores multiple recreational vehicles on the property, would now park vehicles outside, and would be introducing additional vehicles from customers. The character would be changed by essentially creating a parking lot on the property.*

- b. The salon will introduce traffic movements during hours of operation that would not be made without the salon operating in a residential neighborhood. This is important to the safety of the large number of kids that reside in the neighborhood.*
- c. Hardship proves to be only financial for the applicant. The property can be used as intended for the zoning district as a single-family residential property. The NH Board of Barbering and Cosmetology allows for mobile salons and home visits not the establishment of a 3-chair permanent salon. Furthermore, it would seem if the salon is for family and friends that the applicant could do so as a mobile salon not requiring variances from the City.*

We ask that the Board consider our concerns and rule to deny the variances requested by the applicant. Please feel free to contact us if you have any questions.

Sincerely,

*Richard and Connie Adams
68 Windswept Road*

Mr. Landry said that was all he had for correspondence. Chairman Breault invited Attorney Muller to address any of the comments made.

Attorney Muller said it appears to some extent that is some apprehension about the scope of the business. Again, he is going to reiterate the limited scope here because we heard things about traffic and number of chairs. Obviously, the belief is that this is going to be more like the salons that stand-alone. He said high side for a day, you are talking about three clients. She has a total of thirty to fifty clients and eight to ten per week on the high side. That is not a large traffic generator. We are talking again, three per day. He said he will also note about concern about the number of chairs since that was raised last time, he will again reiterate that number one, they agreed to a condition that there would be no further employees and number two, that there will only be one customer at a time.

Attorney Muller said he heard complaints also, or some suggestion that there wasn't enough parking and obviously, they would be here for another count if there was insufficient parking. They would be sent to the Planning Board for a Conditional Use Permit if there was not sufficient parking. He said as far as he is aware, that relief is not required here so there is sufficient parking on this site. He said in terms of how it will appear, there is no signage and this will look like part of the house. The primary use of the property will still remain a single-family residence. They are talking again about a home occupation here. He said he believes that this should address, more or less, the comments that were made.

Chairman Breault turned the hearing back over to the Board.

Chairman Breault said one of the comments was about the applicant's trailer that sits in their backyard and that it goes into their driveway. He asked if that was intended to be moved into the driveway for the summer. Mr. Kavalek said no. He said they will completely move the trailer off of the property when it is not being used. He said they will probably leave it at a campsite. Chairman Breault said then it doesn't go in their driveway. Mr. Kavalek said it will

not in the future. He said it had in the past, but with this proposal, it will not go in their regular driveway. Mrs. Kavalek said they had planned on not storing it in the driveway if this proposal went through. She said Demers Garden Center has space there that they rent out so they would be putting it there for storage. Chairman Breault said he guesses there is some confusion that appears between chairs. He said their drawing shows three chairs, a wet chair and two dry chairs. Attorney Muller said the third chair is for pedicures. He said he is sorry he didn't address that during the comment but it is just for pedicures and it is not going to change the fact that they are only going to have one person there. Again, it is just for that particular service.

Guy Guerra said unfortunately, he still has the same feeling on this that he had on the first time it came through. He said the neighborhood has no businesses in it. It is a relatively new neighborhood with all new, nice and clean, single-family homes. He fails to see the hardship in this. He said there have been some comments brought up about different types of traffic going through the area, however small it may be. They are losing two parking spaces that normally would be used to park their vehicles in, which would be the garage, and plus adding a customer to that. He said he knows that Attorney Muller has already brought that up. He still fails to see the hardship in this and he would really hate to see it be the first one in the neighborhood. He said he doesn't think the neighborhood is built for that.

Anne Ketterer said she wasn't here last month so this is fresh for her. She said she just wanted to note that the orientation of a garage is not a hardship. She said the Board only grants variances when a hardship is demonstrated. She said she understands that Mrs. Kavalek probably runs a nice business out of her home and that is her desire. Unfortunately, it is against the law and they don't have a reason for her to grant them a variance. There is no expressed hardship. The orientation of their garage doesn't count. She said she couldn't support their application.

Chairman Breault said the use is really not in the spirit of the Ordinance to have a business use in a residential district, of this nature because the Ordinance specifically prohibits that use. He said it could be interpreted that it is contrary to public interest. He said you have two direct abutters that are against it and two other abutters that are for it. He said the Board needs to listen to all of that. He said he doesn't think substantial justice is done by granting this.

Guy Guerra made a motion to deny the following variance counts for case ZBA2022-025, 8.25(B) Home Occupation Beauty Shop and 10.02(F) Business Parking in Residential District, which was seconded by Anne Ketterer.

Yeas: Breault, Simoneau, Prieto, Roy,
Nays: Prieto

Upon a split vote, the variance was denied.

Mr. Landry said the next case on the agenda was a case that was also tabled from last month, however, that is the case at 149 Exchange Avenue, case ZBA2022-37, as he announced earlier. He said he would announce it again. This case will be heard at our next ZBA Hearing on June 9, 2022 at 6:00 pm here in the Aldermanic Chambers. No further notice will be going out, this is the notice.

3. **ZBA2022-037**
149 Exchange Avenue, R-1A Zoning District, Ward 1

David Marchand proposes to maintain a shed within 4' of the side lot line in the rear yard, store a 8' x 30' camper trailer within the 20' side yard setback, create one parking space partially located within the front yard and within 4' of the side lot line and another parking space within 4' of a building and seeks a variance from sections **8.29(A)3** Accessory Structures and Uses, **10.09(B)** Parking Setbacks (3 counts) and **8.29(A)2** Accessory Structures and Uses, of the Zoning Ordinance of the City of Manchester, New Hampshire, as per documents submitted through March 22, 2022.

(Postponed from 4/14/2022 ZBA Meeting)

4. **ZBA2022-038**
39 Tougas Avenue, R-1B Zoning District, Ward 8

Andrew Sullivan, Esq., (Agent) proposes to subdivide property located at 39 Tougas Avenue to create one new buildable lot, where the parent parcel Tax Map 819, Lot 15 will remain improved with a single family dwelling with a side yard setback of 4.3' where 10' is required and proposed new lot Tax Map 819, Lot 14 will have lot frontage and width of 46.08' where 75' is required and seeks a variance from sections **6.03** Side Yard Setback at Tax Map 819, Lot 15 and **6.02** Minimum Lot Frontage and Width (2 counts) at Tax Map 819, Lot 14, of the Zoning Ordinance of the City of Manchester, New Hampshire, as per documents submitted through April 8, 2022.

Attorney Andrew Sullivan said with him was Joseph Wichert, who is the surveyor that did the plan and Robert Gennell of 85 Milton Street who is the owner of 39 Tougas Avenue. Attorney Sullivan said he was not going to go through every detail the packet in depth but they have two tax lots that are both non-conforming as they sit today. What they are proposing is to make a better situation by adjusting the frontage. If they adjust the frontage, they will have Lot 15 and Lot 15 is the one to the north. That will be conforming in every regard except where the garage is 4.3' from the new proposed property line. He said Lot 14 will be non-conforming for two reasons. One, it has less than adequate required frontage and therefore it can't carry back the 100' depth. Lot 14 is unique in and of itself because it borders City land. It borders the school property land and it is a dead end street. When these lots were originally created, the school wasn't built and he doesn't know if it was called Tougas back then, but it went around and was a typical subdivision. That stopped when the school bought the property.

Attorney Sullivan said they have the situation and he provided in the packet a chart that will show that these lots, even as it stands now, will be the biggest lots or some of the biggest lots in the area. There are frontages with similar frontages as these. Some are bigger, but he doesn't think any are smaller. In terms of, again, what exists today, Lot 14, which is on the south by the school, that has 10,506 SF and Lot 15 has only 8,900 SF and some change. The requirement in the zone is only 7,500 SF. The proposed Lot 14 would have 9,180 SF and Lot 15 would still have over 10,000 SF. Existing Lot 14 now has approximately 65' frontage and

lot 15 has approximately 65' of frontage. Many of the lots in the area have that. That must have been the zoning at the time. As proposed, Lot 15, the inside lot, will have greater than 65' frontage but Lot 14 will have 46'. If you look at the plan you can see why, because the garage on lot 15, unless you have a pure triangular lot, there is really no way to accommodate that garage and come back with any sort of uniform width that will fit the footprint. The footprint is large as is the lot. Again, most lots are 60' or 70' in frontage. Tougas Avenue is a dead end with only nine lots on it, eight of which have homes. This is the only vacant lot. The lots are served by City water and City sewer and when they meet the minimum depth and area standards, the frontage will be less than 75' on Lot 14 and they will wind up with 46'. Lot 14 will have the required 75' and therefore it will not have required 100'.

Attorney Sullivan said in terms of criteria, he maintains it meets the spirit of the Ordinance. What we are talking about here is frontage verse the density. Both lots are so big that frontage is irrelevant in terms of determining density overcrowding. He said he referred to the Metzger case, which had a similar situation and had less than the required frontage, but the lot was so big that the court ruled it is not dispositive because the public purpose and purpose of the Ordinance was still being met because the lot was so big. That is what we have here. Both these lots are much bigger than required. He said he maintains that the frontage will not interfere with the public health and safety as it is a dead end street, emergency access is available, the lot is very big and the spirit of the Ordinance is observed because it still maintains the character of the neighborhood. Visually, if you drove down that street, you really can't tell where the other side ends because it is City property, but it is not going to disrupt the look or the character of that neighborhood.

Attorney Sullivan said in terms of going for the frontage, other lots in the area have less area than Lot 14 and he could go through a whole litany, which he is not going to do now that other lots have less than 75' of frontage. That is all in his packet.

Attorney Sullivan said he presented a Broker's opinion indicating that it will not diminish the surrounding property values. It is one of the criteria. He thinks even without that opinion, he looks at that and it is a great lot. Again, it is not going to be contrary to the spirit of the Ordinance, in particular, because that particular requirement doesn't appreciably make any difference with a lot so big. He said substantial justice will be done. Here, we've got another full taxable lot with a house on it and if it is denied, you will have almost a half-acre lot bordering City property. It would just be too big. If it is not utilized, as we all know and we are all tired of hearing it, the City needs more housing. This would provide that in a nice quiet dead end street. He said granting relief would actually provide a gain to the public in terms of housing and would not harm the general public, but denying it would create a substantial harm to the applicant.

Attorney Sullivan asked what is a reasonable use. A reasonable use is a permitted use, meaning an allowed use in the zone. A single-family lot is allowed in this zone. What they are trying for is a single-family lot. It cannot be achieved without some sort of relief on this area dimension. That is the intrinsic hardship.

Chairman Breault turned the hearing over to the Board.

Vice Chairman Simoneau said Lot 14 has 46' of frontage and he asked Attorney Sullivan to

remind him of what lot 15 had. Attorney Sullivan said as proposed, Lot 15 has 84' and Lot 14 has 46'. As existing, he said they both have approximately 65' each. As existing and as proposed, they both will have over 7,500 SF of area and as proposed, Lot 15 will be fully conforming except for a 4.3' side yard from the garage.

Chairman Breault turned the hearing over to the public and invited those in favor of or in opposition to this application or those with general comments to come forward. No one came forward to this request and the Chairman asked Mr. Landry if he had any correspondence regarding this case. Mr. Landry said we received no correspondence on this case. Chairman Breault turned the hearing back over to the Board.

Chairman Breault said this is an underutilized lot that sits at the end of a dead end and he doesn't see an issue with it. He asked the Board Members if anyone else had the opportunity to view this property. He said he took a ride by it and it is a quiet dead end neighborhood sandwiched by the School Department and there is really nowhere to go.

Guy Guerra said he is familiar with the area and it is not out of character with the other lots that are in the area. He said he didn't have a problem with this.

Vice Chairman Simoneau said he thinks this does meet the five criteria and is in the spirit of the Ordinance. He said he also believes that the value of surrounding properties would not be diminished.

Michael Simoneau made a motion to grant the following variance counts for case ZBA2022-038, 6.03 Side Yard Setback at Tax Map 819, Lot 15 and 6.02 Minimum Lot Frontage and Width (2 counts) at Tax Map 819, Lot 14 which was seconded by Guy Guerra.

Yeas: Breault, Simoneau, Prieto, Guerra, Ketterer
Nays: None

Upon a unanimous vote, the variance was granted.

(Current Cases)

5. **ZBA2022-050**
180-200 Woodbury Street, B-2 Zoning District, Ward 10

Brian Pratt (Agent) proposes to extend the two-year period to vest the variance granted in case ZBA2020-039 and seeks a variance from section **14.02(B)4** Extension of Two Year Period to Vest Variance, of the Zoning Ordinance of the City of Manchester, New Hampshire, as per documents submitted through April 5, 2022.

Brian Pratt said he is from Fuss and O'Neill and is the Senior Project Manager and Civil Engineer for this case. He said this is a pretty simple application. He said they were here about two years ago for a density increase for the Carisbrook Apartments. They currently have 108 units within the existing building footprint. There is a lot of underutilized storage space from former common areas that were really just not being used for the last decade or

so. He said they came in to request up to another 15 units to be installed in that area. They originally had a pro forma based on construction costs from 2019 and as you know, since then the construction costs have risen a couple of times. Right now, it is currently not financially feasible for them to proceed. They do intend to proceed, it is just with the unexpected rise in construction costs, they are going to put it off and hopefully, if and when construction costs come down, or rents rise to the point where it is financially feasible, they do intend to proceed. He said they did receive site plan approval as well from the Planning Board, so they are just requesting a two-year extension of that previous approval for the density increase and the height of the building is higher than what is allowed in the zone. He said both the use and the height were previously approved with variances in 1994, 2003 and then back in 2020.

Chairman Breault turned the hearing over to the Board.

Chairman Breault asked the Board Members if they remembered this application. Mr. Guerra said he did remember it. He said from what he is remembering about it, there is not going to be any structural changes to the building as it sits. He asked Mr. Pratt if they were just re-doing some of the interior parts of the building that already exist. Mr. Pratt said that was correct. He said it is all interior and there will be some façade changes such as new windows, they do have some landscaping proposed, some patios and some exterior exits for the first floor level, but no building footprint change.

Chairman Breault turned the hearing over to the public and invited those in favor of or in opposition to this application or those with general comments to come forward. No one came forward to this request and the Chairman turned the hearing back over to the Board.

Chairman Breault said he didn't have an issue with extending this for the two-year period.

Anne Ketterer said it seems to her that the Board already went over the merits and granted the variance two years ago. She said it has been some unusual circumstances in the past two years and she thinks it is a reasonable request to extend the variance.

Anne Ketterer made a motion to grant the following variance counts for case ZBA2022-050, 14.02(B)4 Extension of Two Year Period to Vest Variance which was seconded by Guy Guerra

Yeas: Breault, Simoneau, Prieto, Guerra, Ketterer

Nays: None

Upon a unanimous vote, the variance was granted.

Michael Landry said just for a point of clarification, he thinks it is understood that we are talking about a two-year extension from this date. He asked Mr. Pratt if that worked for him. Mr. Pratt said yes.

6. **ZBA2022-051**
166 Reading Street, B-2 Zoning District, Ward 6

Gina Cappucci proposes to construct a rear deck with a 10' side yard setback where 20' is

required and maintain an 8' x 5' shed in the side yard with a 0' setback where 20' is required and seeks a variance from sections **6.03(C)** Side Yard Setback and **8.29(B)** Accessory Structures and Uses, of the Zoning Ordinance of the City of Manchester, New Hampshire, as per documents submitted through April 8, 2022.

Gina Cappucci of 166 Reading Street said what they would like to do is, they have a mudroom on the side of their house that is sinking and they would like to replace that existing structure while also building a deck along the back. She said they spend a lot of time in their backyard, and they would like to have a living space as a deck and they think it will raise the value of their property and the properties around them as well. She said she is requesting the Board's consideration to allow them to build their deck.

Chairman Breault turned the hearing over to the Board.

Chairman Breault asked if the shed was an existing shed. Ms. Cappucci said the shed is a temporary structure and there are three pieces of plywood that are mounted against the side of the house. She said it was built by the prior owners, her in-laws. She said it was built by their neighbor that lives directly abutting, and there are no cement footings or concrete or anything like that.

Vice Chairman Simoneau asked if the neighbor she just referred to was the one on Wellington Road. Ms. Cappucci said no, their neighbor is at 152 Reading Street.

Chairman Breault turned the hearing over to the public and invited those in favor of this application to come forward.

Stacey McGowan Doyon of 152 Reading Street said they are the direct abutters next door and they are in favor of the project. She said she did send an email earlier today and she wasn't sure if the Board received it, but she just wanted to be here in person to let the Board know that they don't have any issues with this whatsoever.

Chairman Breault invited those in opposition to this application to come forward.

Patrick Daley said he and his wife, **Kate Daley** of 180 Reading Street were here to voice their opposition to the variance request at 166 Reading Street. He and his wife are the abutting neighbor at 180 Reading Street and strongly oppose any plan or proposal that does not follow the rules and regulations set forth by the City of Manchester. This project is literally right outside of their bedroom window and any encroachment above and beyond what is allowed, is unacceptable to them. They feel their quality of life would be negatively impacted as a direct result and they would ask the Board to uphold the rules as they are and deny the variance. They believe that any plans or proposal for this project be scaled back to comply with and adhere to any and all setback requirements in place.

Chairman Breault invited those with general comments to come forward. No one came forward to this request. The Chairman invited Ms. Cappucci to speak to the comments made. Ms. Cappucci said she would. She said currently, right now, there is a single car garage that is right outside their bedroom window. She said she thinks that that structure was built within the guidelines historically, that it should have been built in, it was built years ago from the

prior owners. If anything, she thinks that elevating the property value of their property could help the comp values of the surrounding houses, so to the contrary of what the Daley's believe, she thinks it could even raise the value of their house just based on the residential comps in real estate. She said regarding the structure that is referenced on the side of the yard, or the shed, there is no issue with following compliance with that, that is exactly why it is included in the project that was built temporarily by her in-laws years ago. She said she thinks the right thing to do is to follow the compliance, so she does agree with Mr. Daley there. Other than that, she doesn't think that with the existing one-car garage and a small deck in the back of their house, she doesn't agree with Mr. Daley that that creates any type of privacy issue. As a matter of fact, on the deck, she thinks there is even going to be railings that will block some of the view that he will have. She said she disagrees with him and thinks it is far-fetched. She said the single-car garage is probably more impactful on their privacy than the deck would be.

Chairman Breault turned the hearing back over to the Board.

Chairman Breault addressed Mr. Landry and said he is looking at the plan that they submitted and the 10' setback is from the property at 152 Reading Street to the south of their home. Mr. Landry said that is correct. He said he thinks it is probably worth noting that you look at the house at 166 Reading Street, the subject's home, is rather close and is in the order of 4' or 5' or 6' from the side lot line. This is in the B-2 district so this is a residential neighborhood in the B-2 district and a lot of times in the R-1B district, the medium density zone, we have 10' side yard setbacks, so this would satisfy the Ordinance if it was in the R-1B zone, however, it being in the B-2 zone, it got called out. He said that is something to consider.

Chairman Breault addressed Ms. Cappucci and asked if she alluded to the fact that she would remove the shed. Ms. Cappucci said yes. She said the shed is three pieces of plywood that can be easily removed.

Guy Guerra said the development that Ms. Cappucci is looking to do to the building itself is not any closer than the garage currently is. He asked if that was correct. He said they are working on the other side of the garage. Ms. Cappucci said that was correct. Mr. Guerra said it is not getting any closer to them. Ms. Cappucci said no, it is actually on the opposite side of the garage.

Anne Ketterer said neither the garage nor the existing home actually meet the setback criteria. Mr. Guerra said that was correct. Ms. Ketterer said no one is going to tear down their garage or their house. They are non-conforming and that is ok in this instance. She said they are building a deck and the deck is 10' off of the lot line to their south that is abutting 152 Reading Street and the neighbor at 152 Reading Street has no issue with this. In fact, the applicant is not making the issue worse, she is taking it off of the lot line by 10'. She said on the plan, it doesn't appear to affect or worsen the situation of the neighbor at 180 Reading Street. As Ms. Cappucci stated earlier, likely the garage is something they would take issue with, but that is a garage and it is there and it probably predates the Zoning Ordinance. She said it is an unusual shaped lot. It is kind of narrow and kind of long and we see this sometimes. The Zoning Ordinance is best meant for perfectly square or perfectly rectangular proportional lots and not all lots can do that. She said she does think that there is a hardship here because of the dimensions of the lot and she would support this variance. She thinks it

meets all five criteria.

Ms. Ketterer asked the Board Members if they wanted to request that the applicant remove the shed. Chairman Breault said the Board could make it a condition if they want. Vice Chairman Simoneau asked if that removed one of the counts. Mr. Landry said one alternative is just not to grant the relief for the shed. Chairman Breault asked Mr. Landry if that was the one for the accessory structures and uses. Mr. Landry said yes, 8.29(B).

Anne Ketterer made a motion to grant the following variance count for case ZBA2022-051, 6.03(C) Side Yard Setback and deny relief from variance count 8.29(B) Accessory Structures and Uses, which was seconded by Michael Simoneau.

Yeas: Breault, Simoneau, Prieto, Guerra, Ketterer

Nays: None

Upon a unanimous vote, the variance for count 6.03(C) was granted and the variance for 8.29(B) was denied.

Ms. Cappucci asked if she could just clarify. She asked the Board if they are saying that she does need to remove the shed or she doesn't need to. Chariman Breault said she does need to remove the shed.

7. **ZBA2022-052**
177 Maurice Street, R-1B Zoning District, Ward 8

Daniel Senneville proposes to replace an 8' x 8' enclosed porch with a 5' street yard setback on a corner lot with a 8' x 10' enclosed porch and a 6' x 10' deck with a 5' street yard setback where 20' is required and seeks a variance from section **6.03(C)** Side Yard Setback, of the Zoning Ordinance of the City of Manchester, New Hampshire, as per documents submitted through April 8, 2022.

Mr. Landry said he believes that the count should be something different but asked the Chairman to carry on and before we make a motion, he will make the correction.

Daniel Senenville said he has lived at 177 Maurice Street for approximately 33 years. He said that porch that they are talking about and looking for relief from was there when he bought the house. It was well worn then and he is guessing it is about 50 years old. It has no footings, it is sagging and it needs to be replaced. He said it is sagging enough that he cannot close the door and the windows cannot be opened and closed. He said it is sinking on almost a weekly basis. They are looking to replace that porch with something just a little bit bigger and when the construction company that is going to be doing it, pulled a permit and that is when they found out there was a problem. He said they are looking to make it just a little bit bigger to allow for a slider on the back and have access to their backyard, similar to their last deck.

Chairman Breault turned the hearing over to the Board.

Chairman Breault said he took a look at this and there is a bit of a hardship with this being on a corner lot. He said that presents a little bit of a challenge. Vice Chairman Simoneau said

herein lies the hardship.

Chairman Breault turned the hearing over to the public and invited those in favor of or in opposition to this application or those with general comments to come forward. No one came forward to this request. The Chairman asked Mr. Landry if he had any correspondence regarding this case. Mr. Landry said he did not and the Chairman turned the hearing back over to the Board.

Mr. Prieto asked Mr. Landry if the count was correct. Mr. Landry said technically it was called out as a side yard setback, but the plan wasn't very clear. The language was correct in that we are talking about a 20 requirement for the street yard setback, so it is 6.03(A) Front Yard Setback, because he's got two front yards being on a corner lot. Again, he thinks it is worth noting that he is not encroaching any more than the existing structure already is.

Guy Guerra made a motion to grant the following variance count for case ZBA2022-052, 6.03(A) Front Yard Setback which was seconded by Joe Prieto.

Yeas: Breault, Simoneau, Prieto, Guerra, Ketterer
Nays: None

Upon a unanimous vote, the variance was granted.

8. **ZBA2022-053**
1860 Lake Shore Road, R-1A Zoning District, Ward 6

Jillian Corey proposes to construct a deck on a corner lot with a 13' side yard setback where 20' is required and a 22' street yard setback where 25' is required and seeks a variance from sections **6.03(A)** Front Yard Setback and **6.03(C)** Side Yard Setback, of the Zoning Ordinance of the City of Manchester, New Hampshire, as per documents submitted through April 15, 2022.

Jillian Corey of 1860 Lake Shore Road said she is asking for relief from the current zoning to build a deck, a slightly larger deck than already exists on the current property. She said she actually had a variance from the Board last fall to put a pool on her property and extending the current deck as she is requesting will allow for a safer entrance onto that pool area for her family. She said she is on a corner lot and the house is one of the oldest residences on Lake Shore Road. The corner lot used to have a lane next to it and now it has a road, so now she is on a corner lot and the side yard is a little bit small.

Chairman Breault turned the hearing over to the Board.

Chairman Breault said this is similar to the last request where they just don't have the room. He said they are trying to connect a deck with the pool to make it more accessible.

Chairman Breault turned the hearing over to the public and invited those in favor of or in opposition to this application or those with general comments to come forward. No one came forward to this request. The Chairman asked Mr. Landry if there was any correspondence regarding this case and Mr. Landry said there was no correspondence and the Chairman

turned the hearing back over to the Board.

Chairman Breault said he thinks this is in the spirit of the Ordinance. Vice Chairman Simoneau said he agrees with the Chairman and said it is in the spirit of the Ordinance. He said he didn't see the values of the surrounding properties going down at all. He said the corner lot, again, therein lies the hardship.

Michael Simoneau made a motion to grant the following variance counts for case ZBA2022-053, 6.03(A) Front Yard Setback and 6.03(C) Side Yard Setback, which was seconded by Anne Ketterer.

Yeas: Breault, Simoneau, Prieto, Guerra, Ketterer
Nays: None

Upon a unanimous vote, the variance was granted.

9. **ZBA2022-054**
70 Barbara Lane, R-1B Zoning District, Ward 8

Jason Jette proposes to construct a 16' x 16' one story addition with a 5' side yard setback where 10' is required and seeks a variance from section **6.03(C)** Side Yard Setback, of the Zoning Ordinance of the City of Manchester, New Hampshire, as per documents submitted through April 18, 2022.

Jason Jette of 70 Barbara Lane said they are looking to build a 16' x 16' addition to their home to provide additional living space for their family.

Chairman Breault turned the hearing over to the Board. There were no questions or comments from the Board and the Chairman turned the hearing over to the public and invited those in favor of or in opposition to this application or those with general comments to come forward. No one came forward to this request and the Chairman asked Mr. Landry if there was any correspondence regarding this case. Mr. Landry said we have received no correspondence on this case and the Chairman turned the hearing back over to the Board.

Chairman Breault said the shape of this lot somewhat limits what they can do. He said it is a hardship in its own. He said he didn't think it was going to hurt any values in the neighborhood.

Vice Chairman Simoneau said he agrees and this is one of the lots that he did go see and it does fit in the neighborhood with the improvements they are looking at making. He said he does believe that it meets the five criteria.

Anne Ketterer said she would further note that the lot line is not parallel to the house and so were the applicant to conform directly with the Zoning Ordinance, the hardship would further become that they're building a structure that is not to the right angle. It is very difficult to do that and costly. Furthermore, if you were to build it parallel to the house, but keep it within, the addition would be minimized to a point where she doesn't believe it would serve their use as an additional family space. She said she does think as we look around the neighborhood,

this is in keeping with the character of the neighborhood and she doesn't see how it would diminish anyone's property values. She said she sees the hardship here.

Vice Chairman Simoneau said he believes this meets the five criteria.

Michael Simoneau made a motion to grant the following variance count for case ZBA2022-054, 6.03(C) Side Yard Setback, which was seconded by Anne Ketterer.

Yeas: Breault, Simoneau, Prieto, Guerra, Ketterer

Nays: None

Upon a unanimous vote, the variance was granted.

10. **ZBA2022-055**
99 Mayflower Drive, R-1B Zoning District, Ward 1

John Wight (Agent) proposes to construct a second story addition on a corner lot with a 19.6' street yard setback where 20' is required and a 9.6' side yard setback where 10' is required and seeks a variance from sections **6.03(A)** Street Yard Setback and **6.03(C)** Side Yard Setback, of the Zoning Ordinance of the City of Manchester, New Hampshire, as per documents submitted through April 18, 2022.

John Wight said he is the builder for Dave and Donna Fitzgerald of 99 Mayflower Drive. He said they bought the house two years ago and they are not doing any foundation enlargement. It is just a second floor addition to the existing house. The existing house has a 2' overhangs, actually and the new addition for the second floor is only going to be 16' so it is actually going to be less of an encroachment. He said it is similar to several houses in that neighborhood. Their daughter, son-in-law and two toddlers want to move home and live with them. That is the reason why, they want to come back and live in Manchester. He said the husband works in Manchester and the daughter works from home.

Chairman Breault turned the hearing over to the Board.

Chairman Breault said this is one of those situations where the house is non-conforming and they want to add space. They are not encroaching any further into the lot than it already is. Mr. Guerra said they are not making it any less conforming. He said they are just going up and there is a lot of that going on right now with smaller houses.

Chairman Breault turned the hearing over to the public and invited those in favor of or in opposition to this application or those with general comments to come forward. No one came forward to this request and the Chairman turned the hearing back over to the Board.

Chairman Breault said the only way they could go without many more variances is to go up. He said he doesn't think this is going to hurt anybody's values. Their hardship is what it is and it is within the spirit of the Ordinance and is not contrary to public interest.

Joe Prieto said he concurs and thinks it meets the criteria as laid out in the application.

Joe Prieto made a motion to grant the following variance counts for case ZBA2022-055, 6.03(A) Street Yard Setback and 6.03(C) Side Yard Setback which was seconded by Guy Guerra

Yeas: Breault, Simoneau, Prieto, Guerra, Ketterer
Nays: None

Upon a unanimous vote, the variance was granted.

11. **ZBA2022-026**
180 Ward Street, R-1A Zoning District, Ward 1

Andrew Sullivan Esq., proposes to develop a non-conforming lot, TM 284, Lot 32, with buildable land area of 11,000 SF where 12,500 SF is required, where the lot is subject to consolidation with property located at 180 Ward Street which is improved with a single family dwelling and which also has buildable land area of 11,000 SF where 12,500 SF is required and seeks a variance from section **11.03(D)2(d)** Conditions for Development of Non-Conforming Lot, of the Zoning Ordinance of the City of Manchester, New Hampshire, as per documents submitted through April 21, 2022.

Attorney Andrew Sullivan said with him is Pierre Peloquin and Jim Curran. Attorney Sullivan approached the Board with some handouts. He said this is another older neighborhood with a 1906 plan which he remembers that because the convenience store on the side that used to be called 1906. He is not sure if the convenience store is still there. He said virtually all of the lots in this area are the same size. These are the 80' to 100' and these particular lots are both 110' x 100'. Coincidentally, they are both corner lots so they have more frontage than most other lots in the area. They were conveyed together from the get go. The house on Ward Street was built in 1957 with a side entry garage coming off Edgar Street. The garage is within the 25' setback and he imagines in 1957, that was acceptable but he doesn't know that, he is just making that observation. Other than the lack of the 12,500 SF currently required in this neighborhood, they all meet the dimensional requirements. They have the frontage, they can meet the setbacks except again, for the encroachment of the existing garage that was built in 1957 and they lack 150' of SF area, but if you look at the old plans he included, you can see that they are all like that. As a matter of fact, he just counted on the chart in exhibit K that he gave the Board, 39 lots that all have 11,000 or less SF in area. These lots are consistent with the character of the neighborhood.

Attorney Sullivan said the former owner sold two lots to two separate entities. Coincidentally, the applicant owns both entities, but he didn't know that was wrong and he was always told to not own them together for a variety of reasons so that is why that happened. It wasn't any intent to do any subterfuge or anything of that sort. He said the City takes position that because they are non-conforming, we are here not only for the dimensional requirements, but we are here for 11.03, the consolidation requirement as well.

Attorney Sullivan said it is consistent with the character of the neighborhood, which is clear if you look at the tax map and the plans included. There is plenty of emergency access so there is no issue about public safety. The density is consistent with the area. It is a proven lot size that can meet a single-family house. It observes the spirit of the Ordinance for those reasons

alone. The Broker's opinion indicates that there is no diminish in values of surrounding properties and even without that opinion, it is pretty obvious they are just looking to build the same thing that exists everywhere else. This is one of the few remaining vacant lots in the area. Again, the same analysis as last time, it is an allowed use and you can't do the allowed use, which is considered to be a reasonable use, unless they get the variance and that is the intrinsic hardship.

Attorney Sullivan said a question arose earlier today because the topography of the lot does settle in, maybe 2' or so, lower than the roads. One of those plans he submitted to the Board, from the website, it shows the water line and the sewer line. They are no less than nine catch basins across the street from McCarthy on this side of McCarthy on Edgar Street. Clearly, they are there for a reason, to catch the water. The plan is that the lot is going to get built up and the garage will be on the left hand side, meaning it will not be on the street side. It will be on the other side, and the lot they build up, such as any outflow, will run into the streets and the catch basins will take care of that.

Attorney Sullivan said there is another question of whether or not the site itself is wet or has vernal ponds. It does not have a vernal pond, and you can test it for that and they went out there and took pictures and you can see it is a dry lot and those are white pine trees. He said he also submitted an email from Mike Dahlberg, who is the engineer that drew up the plans and he asked his staff who actually visited it and he opines that white pines do not thrive in a wet area and they only thrive in a dry sandy areas. He said we all know that area, historically, is river bottoms and it is all sandy out there. There are no vernal ponds, and there is no water being captured on the lot and the lot will be built and configured so that the run-off will not go in any abutting lots.

Attorney Sullivan said they maintain that they have met the five criteria and when he first saw this plan, he said "why are we going for a variance?" It looks perfect and he submits that this is the type of variance that the Board Members want to see.

Chairman Breault turned the hearing over to the Board.

Chairman Breault said Attorney Sullivan addressed the few of the questions he already had about how shallow it was to the road. He said he is fine with that. He said their grade certificate with the City, will require that.

Pierre Peloquin addressed Chairman Breault and said if you are familiar with West Webster Street in Manchester, between River Road and Elm Street, there is the Corville Nursing Home. He said there is a lot right across the street, that was about 4' below road grade, that he purchased last year with his partner, Dennis Proulx. He said everyone said "what the heck are you doing? There is a pond there and in the winter-time people skate there." He said they elevated and built that home, graded everything away and there is no water. He said Ben Gamache owns the house behind it on Milne Court, behind that subject plot and he used to have two sump pumps running in the winter and spring. Those sump pumps no longer operate because the basement is dry. He said the same intention would be done here.

Chairman Breault turned the hearing over to the public and invited those in favor of this application to come forward.

Karen Nord of 23 Edgar Street said she lives across from Lot 32, which is the vacant lot which Jim wants to build on. She said she has a major concern and they are addressing the issue of that lot being wet. Historically, from time to time, that lot has been a swimming pool. If it is any indication as to what could happen, this past winter, that section of McCarthy Street is lower than the rest of McCarthy Street. She said there was a pool of water that froze directly where you would have that driveway come out of that garage in the proposed building they are thinking of putting in there. She said she knows that the street is supposed to be re-done in 2024 and if they address that drainage issue, that would be great. She wouldn't have any problem with a new house going in. In fact, she said her lot is the same lot size as what they are planning on building on. Building that area up does wonders for the building themselves, but the road is just going to be an issue for whoever lives in that house. Unless the City takes care of that, it is going to be an ongoing issue. She said on Edgar Street, the water goes diagonally across the street and that also froze. It was glare ice. Everybody who goes through from Ward Street, across Edgar Street and up McCarthy, had to deal with that that morning. She said it is not fun. She had the corner of her lot taken out by plows because they cut across that area going onto Edgar and take out all of the rocks and everything else that she has put on that corner. The woman that lives next to her, Mrs. Goodno, has the same issue. The street is the issue. She doesn't have a problem with the building going up. She doesn't have a problem with the size of the lot because it does conform to everything. She is just concerned that building it up, they are going to be putting in soil and stuff and the settling might cause an issue. She said she couldn't speak to that because she is not a civil engineer. These are the issues that she thinks are concerning most of the neighbors.

Ms. Nord said the other issue that she has is the size of the house that goes in there. She is not looking for a mega-mansion to go in there, but something that conforms with the rest of the neighborhood, she would have no problem with. She said that is a little on the large size, but so be it. She said whatever windows around the side of the house are going to be directly facing her house. She said she is prepared, but it is not something that she would want put up, but so be it. She said she did have one question. She said currently the house on the other lot is for sale. She asked if they had it listed as having the other lot going with it or not. Mr. Curran said the sale of the house is contingent on the outcome of this meeting because the two properties are considered joined. He made the sale of the house contingent on what happens tonight. He said to answer Ms. Nord's question, the lot is not being sold with the house, they are being sold separately.

Pierre Peloquin asked if he could address Ms. Nord's concern about the size of the house. He said he and his partner are not in the mega-mansion business. He said they do starter homes and this particular house is 1,500 SF. Chairman Breault asked if it fits within the buildable area. Mr. Peloquin said it fits within the buildable area and it is the identical house as a photo he had, which he distributed to the Board. He said that house was built about five months ago behind Trinity High School at 318 Highland Street. He said it will fit perfectly in the north end. It is not a mega-mansion and they will probably have the value in the \$475,000.00 range.

Chairman Breault invited those in opposition to this application. No one came forward to this request and the Chairman invited those with general comments to come forward.

Gary Hunter said he is an abutter at 164 McCarthy Street said he is not here to debate Mr. Peloquin or Attorney Sullivan who he thinks does a wonderful service to the City, but that lot,

it needs to be noted and in the record in case conditions change in their basements, is what he is suggesting. He said he has been there for 35 years and every March, that lot is Lake McCarthy. They even call it Lake McCarthy. It floods and it stays up good and long. It is drained by sixteen to eighteen 80 year old white pines, true, and they do like dry soil but they are very tolerant of wetness during vernal periods, during springtime. It is not the drainage under the street that causes him concern. Across the street, there are three abutters, Ms. Distefano, the Hunter-Houghton family and then Paul's property, which now becomes the low spots in the neighborhood. He said he is perfectly comfortable with this minor adjustment, this is not even a concern for the size of that thing and he also respects the work that Peloquin and Arthur do and what Mr. Curran has done with renovating the original house. His major concern is what if his cellar, Ms. Distefano's cellar and Paul's cellar starts to be wet every spring and they have Lake McCarthy on their side of the street. That ground water, not so much what falls and runs off, but rather the existing pool of water, which is very apparent. It is so apparent that when they bought their property 35 years ago, a gentleman two houses down came down and said, you know, you will want to pound in your own water tap in there because there is a natural spring. That is how much water is in there. He said his driveway sinks about 1½" a year and there is a lot of water in that neighborhood. He said we are the low spot in that neighborhood.

Mr. Hunter said his concern is not so much the buildable lot or the great work that these gentleman are going to do, or the addition of housing which God knows, the City needs, but what is the ground water that we all reside on. He said the pool that is just underneath their homes, now takes hold on the three houses across the way. That is his concern. He said he does appreciate the Planning Department and these gentlemen jumping to answer it, but he wonders if they would speak to what suggestions they would have there.

Julia Distefano of 180 McCarthy Street said she moved up to New Hampshire in 1980 and she was shocked that winter about the puddles that were more than a foot deep. That lot fills up with water. She said right now it is full of trees, and she was taught that trees drink a lot of water. What is going to happen when all of those trees are cut down? She is concerned because she has very vivid memories of very deep puddles or lakes in her driveway and on that street. The concern is the water and in terms of the underground springs. She has one in her backyard too and no number of sacks of soil will fill that up as it always sinks, the same as Mr. Hunter's. That is the concern, the water and the flooding. As she said, she was told that trees drink a lot of water. What happens when the trees go? She doesn't want Lake McCarthy and she certainly doesn't want a basement full of water either.

Chairman Breault asked Attorney Sullivan if he would like to address this testimony.

Attorney Sullivan said it is somewhat of a basin the way it is configured, but it is going to be built up. He said the amount of water comes from the sky and that is going to be the same. It is not going to have an opportunity to establish the presence as a pond or a lake and have the time to filter into any underground water. He said he doesn't know if that is even happening. If there are underground springs throughout the area, that is already there and that lot or that build up is not going to affect that and it won't be affected. The idea is that any water will just run off into the nine drains or catch basins that are already there. He thinks as Mr. Peloquin just pointed out on West Webster Street, he had a similar but worse situation and building it up did the trick.

Chairman Breault turned the hearing back over to the Board.

Chairman Breault said he just had one quick question. He addressed Ms. Distefano and said her home abuts YDC behind her. Ms. Distefano said yes. Chairman Breault said that could be a contributing factor for her water as well. He said the fact that that is an unmaintained area with watershed and if it is an underground source, it is kind of a prevalent situation there and he would think that bringing up the grade of this lot would probably help that situation and bring it into the catch basins for the water coming from across the street. He said they are across from her, so he doesn't know what impact that would have, but whether or not, drainage is typically something in the street and is by the City. It is nothing the Board usually put a burden on an applicant for.

Mr. Peloquin said he would like to point out that he has been in front of this Board and other boards for the last thirty plus years. He said he and his partner, Dennis, are so called tree huggers and they do not strip clear a lot, at all. This home would fit within the building envelope and they would retain whatever white pines that they can in the backyard, both side yards and even in the front except for of course where the driveway is and walkway, but they are not taking 11,000 SF of 70 year old trees and knocking them down. They will maintain as many as they can to drink the water.

Chairman Breault said he thinks this lot size is consistent with the neighborhood. He said he didn't think it was going to hurt any values to build a house there. The hardship is that it is an undersized lot for current zoning and it is non-conforming.

Vice Chairman Simoneau said he understands the frustration of the neighbors, but he thinks with what they are planning on doing, he does believe it is going to help. He said he is in favor of this. He thinks it meets the five criteria and the fact that it is a corner lot, again, therein lies the hardship right there.

Michael Simoneau made a motion to grant the following variance count for case ZBA2022-026, 11.03(D)2(d) Conditions for Development of Non-Conforming Lot which was seconded by Anne Ketterer.

Yeas: Breault, Simoneau, Prieto, Guerra, Ketterer

Nays: None

Upon a unanimous vote, the variance was granted.

12. **ZBA2022-059**
625 Douglas Street, R-2 Zoning District, Ward 11

Matthew Lortie proposes to construct a detached garage with an accessory dwelling unit above, in the side yard with a height of 22' 10" where 15' is allowed and an area of 1,222 SF where 600 SF is allowed, as well as maintain a retaining wall 5' 2' high in the front yard and within 10' of the property line and seeks a variance from sections **8.29(A)2** Accessory Structures and Uses, **8.27(B)** Height of Fences Walls and **8.27(D)** Retaining Walls, of the Zoning Ordinance of the City of Manchester, New Hampshire, as per documents submitted through April 25, 2022.

Matthew and Dorean Lortie of 625 Douglas Street said they are proposing to build an ADU above the garage. Mr. Lortie said Mrs. Lortie's parents are elderly and they were lifelong residents of Manchester and the homeowner of where they are renting ended up being put into a home so their children sold the house. They in turn had to move to a friend's house in Warner but being elderly, all of their doctors are here in Manchester, so they are commuting between Warner New Hampshire and Manchester between three and four times a week for appointments. He said they are just trying to build something to allow them to move home. Mr. Lortie said his wife is a nurse and is mostly doing a lot of their care. She is their proxy.

Chairman Breault turned the hearing over to the Board.

Chairman Breault said this is a good size lot with plenty of room. He said he is somewhat familiar with the area. He said based on the topography of the land, it is not really good. He asked Mr. Lortie if the retaining wall that is part of this, is the retaining wall that exists. Mr. Lortie said yes, it is a retaining wall that exists in the front of the yard. Chairman Breault said it is alongside the driveway. Mr. Lortie said that is correct. Chairman Breault said that is an existing condition that just never got approved. Mr. Lortie said that was right. He said he put that in almost 15 years ago. He thinks it was the year after they purchased the home, and that land used to slope down and hit the driveway and the other side of it was an absolute gully that was there. It consistently just washed into the street and into the driveway and maintaining it was terrible. With the approval of the homeowner next door, Deb Piper, they just removed it and put in a retaining wall there. They took all the land from that side and filled the gully because they were also having freezing issues with the water line. The Water Department said it was because it was coming through the side under the driveway. They were hoping that moving the dirt from one side to the other would help and they haven't had a freeze issue since.

Chairman Breault turned the hearing over to the public and invited those in favor of or in opposition to this application or those with general comments to come forward. No one came forward to this request and the Chairman asked Mr. Landry if there was any correspondence on this case. Mr. Landry said he had no correspondence regarding this case and the Chairman turned the hearing back over to the Board.

Chairman Breault said it is a large lot. They would like to build an Accessory Dwelling Unit, which is permitted as an accessory structure. They have an existing wall that has been there for 15 or more years correcting a great problem at their driveway. He thinks the retaining wall is a more or less maintenance item. He asked Mr. and Mrs. Lortie if the fences and the height are based on that same retaining wall. Mrs. Lortie said they don't have a fence at all so she doesn't know what the fence references to. Chairman Breault said then it applies to their walls. He said it is over a certain height. Mr. Lortie said it tapers from about 6" closest to the house and goes almost 200' and by the time it gets near the street, just being the top of the wall they kept level and that is where it gets 5'2".

Chairman Breault said he didn't think that this was going to hurt anybody's values in the neighborhood and if anything, it will increase it. He said the hardship is the wall. They had a problem and they fixed it. He said he doesn't think it is contrary to public interest and he thinks it satisfies the five criteria.

Anne Ketterer said she would like to make one comment. She said the Accessory Dwelling Unit is 600 SF and this is twice that at 1,222 SF so they are building another house on their lot. Mr. Lortie said they didn't understand what that number is. Mr. Landry said if you look at the first floor plan, the area of the Accessory Dwelling Unit is 744 SF. Ms. Ketterer asked if the 1,222 SF was inclusive of the garage. Mr. Landry said if you look at the first renderings, the left front and left rear, there is a lean to area and a front porch that combined. He said when we are talking about that 1,222 SF, that is the area of the accessory structure and 600 SF for an accessory structure is allowed. He said they don't need relief for the area of the Accessory Dwelling Unit because the area of the Accessory Dwelling Unit, if you go to the next page, the first floor plan, that is 744 SF within the allowable 750 SF. Chairman Breault said the foundation is still 24' x 31'.

Michael Simoneau said he agrees and does believe this meets the five criteria.

Michael Simoneau made a motion to grant the following variance counts for case ZBA2022-059, 8.29(A)2 Accessory Structures and Uses, 8.27(B) Height of Fences Walls and 8.27(D) Retaining Walls which was seconded by Guy Guerra.

Yeas: Breault, Simoneau, Prieto, Guerra, Ketterer
Nays: None

Upon a unanimous vote, the variance was granted.

13. **ZBA2022-060**
1176 Somerville Street, R-1B Zoning District, Ward 7

Jeremy McFarland proposes to maintain a parking space along Porter Court partially in the front yard and expand the parking area along Somerville Street to create additional front yard parking with four parking spaces in the street yard setback and with a driveway width of 42' where 24' is allowed and seeks a variance from sections **10.09(B)** Parking Setbacks (4 counts) and **10.08(C)** Driveways Width, of the Zoning Ordinance of the City of Manchester, New Hampshire, as per documents submitted through April 28, 2022.

Jeremy McFarland of 1176 Somerville Street said what they are looking to do is just enlarge their parking due to having four cars, one for himself, his wife and his two children. He said this way, none of them have to park on the street which is Somerville Street and as everyone knows, it is an extremely busy street and being on a corner lot, it is probably in their best interest to not have any obstructions there.

Chairman Breault turned the hearing over to the Board.

Chairman Breault asked Mr. McFarland what his existing curb cut was. Mr. McFarland said it was 24'. Chairman Breault said from the sound of things, the Board is also looking at the parking for the other tenant at the end on Porter Street. Mr. McFarland said he wasn't going for that. Chairman Breault said he knows, but he guesses from what he read in the application, that was one of the counts. He asked Mr. Landry if he was correct on that. Mr. Landry addressed Mr. McFarland and said when it went through the zoning review, they

didn't see a permit for that and they couldn't issue a permit for that as it sits so they added it as a count to address now. Mr. McFarland said that was 2004 or 2005 when they originally went for an additional driveway for their tenant on 183 Porter Street. He said he guesses that they went for a 42' long driveway and it turned out to be 31' or 33' long and when he was speaking to Glenn Gagne about this, he asked if he wanted to go for the additional 11' and he said there was no need. Chairman Breault said then this was already granted by variance. Mr. McFarland said yes, by a permit or whatever it may have been back in 2005, he believes.

Mr. Landry addressed Chairman Breault and said his initial question was on Porter Court. Chairman Breault said that was correct. He said but the 24' cut he was referring to was Somerville Street and the second comment was regarding the Porter Court driveway. He said he drives by this corner probably four times a week so he is very familiar with it. He said he wouldn't want to park his cars on Somerville Street either, to be honest with you. That whole intersection is people running the stop signs constantly and he always proceeds with caution when he is at that intersection. He said it is a four way stop and people don't know the rules of the road so they run it constantly and it is fast traffic. He said he can understand Mr. McFarland's request for additional parking on the lot.

Chairman Breault turned the hearing over to the public and invited those in favor of or in opposition to this application or those with general comments to come forward. No one came forward to this request. The Chairman asked Mr. Landry if there was any correspondence on this case. Mr. Landry said there was no correspondence and the Chairman turned the hearing back over to the Board.

Chairman Breault said he didn't know if the Board recalled that a few years ago they granted relief to Mr. Velez at 191 Porter Street. He said his carport was virtually on that line, where that 3' strip was kind of in question as to who owns it. He said he didn't know if that was ever established or not but Mr. McFarland made a comment in his application that none of his abutters had an issue with this. He said he assumes that Mr. McFarland has spoken to his abutters. Mr. McFarland said he has.

Chairman Breault said this is a tight neighborhood and a busy corner. He said there is nobody opposing this or has voiced their opinion, anyhow. He thinks that parking presents a hardship for the applicant being where he is. It is a legal two-family home and that will add parking for both units.

Guy Guerra said based on where this is and looking at the situation the way it is, he doesn't have a problem with this. He thinks getting the cars off of the street is actually a good idea down in that area.

Vice Chairman Simoneau said he wanted to echo what the Chairman said. He said he has been down Somerville Street many times and he will concur, you don't want to park on the street given the situation. He said he believes this does meet the five criteria. He said he thinks justice would be done and it is in the spirit of the Ordinance.

Michael Simoneau made a motion to grant the following variance counts for case ZBA2022-060, 10.09(B) Parking Setbacks (4 counts) and 10.08(C) Driveways Width which was seconded by Joe Prieto.

Yeas: Breault, Simoneau, Prieto, Guerra, Ketterer
Nays: None

Upon a unanimous vote, the variance was granted.

14. **ZBA2022-057**
87 Westminster Street, R-1B Zoning District, Ward 9

Andrew Sullivan Esq., proposes to subdivide the property where the proposed lot at 87 Westminster St. (Tax Map 544, Lot 96) will remain improved with a two-family dwelling on a lot with 7,188 SF of buildable lot area where 15,000 SF is required and with frontage and lot width of 79.88' where 150' is required, and where proposed new lot Tax Map 544, Lot 90 will have 39.39' of frontage and width along Blackstone St. where 75' is required, with buildable lot area of 3,593 SF where 7,500 SF is required, proposed side yard setbacks of 8.8' on each side where 10' is required, a proposed rear yard setback of 18.5' where 30' is required, with a building height of three stories where 2½ stories are allowed and with a parking space within 4' of a building and a lot line and seeks a variance from sections **6.02** Minimum Lot Frontage and Width (2 counts) and **6.01** Minimum Buildable Lot Area at Tax Map 544, Lot 96 and **6.01** Minimum Buildable Lot Area, **6.02** Minimum Lot Frontage and Width (2 counts), **6.03(C)** Side Yard Setback (2 counts), **6.05** Height in Stories and **10.09(B)** Parking Setbacks (2 counts) at Tax Map 544, Lot 90, of the Zoning Ordinance of the City of Manchester, New Hampshire, as per documents submitted through May 3, 2022.

Attorney Andrew Sullivan appeared along with Joseph Wichert and John Wight. Attorney Sullivan said he wanted to take a quick peek to kind of give the Board how these lots wound up looking the way they are. He said if you go to the field plan, exhibit F, Plan 401B, you can see how it kind of reminds him of the Page Street area, with all 20' to 25' lots and actually, mostly 20' lots. He said if you flip to the next one, Exhibit G, it is a little close up and you can see that the Westminster, 96-98 are all together. Who knows why they were connected under Blackstone lots, such as 122 and 123, but they are. They are all 20' lots and that is why you wind up with this strange configuration. As far as he can see in that area, it is the only grouping of that sort. It is a very unusual grouping and if you look at it from the submitted plan, you can see that the Blackstone lot is useless for the Westminster Street property. Even though the garage is going to be taken out, you have to do some strange configuration and what are you going to use it for. The other lot is big enough to do whatever. So they have this odd shaped, odd sized lot. He said there are other lots that are 45' and further on the corner, there is one that is not a perfect rectangle as it has got a little bit wider frontage, but a smaller rear end.

Attorney Sullivan said they are here because it is such an unusual lot and yet it has no other use except a single-family house. You can't use it for anything else and you wouldn't want to put a garage there for Westminster Street. You would be walking too far to the main house. This will kind of give the Board an overview of what they are dealing with here. This is an old neighborhood from 1912 when it was created. Most lots are 50' to 60', but the start at 20' increments. If you recall back then, people just took whatever section of the 20' lot they wanted and that is why you've got some 50' and 70' and that sort of thing.

Attorney Sullivan said they are also all 90' deep and this is actually 89' and some change, but the whole neighborhood are 90' deep lots, that's it. He said as a matter of fact, he thinks last year on Westminster, there was a 45' lot that got a variance, but it is a 45' x 90' single-family home. Again, they couldn't do anything else with it.

Attorney Sullivan said in terms of the Westminster lots, there are actually three lots, 90, 96 and 96A, but they have always been used on Westminster Street and it is a condition of the variance if it is granted that 96 and 96A would be merged to create a formal one lot as it has been used for decades. Again, if they did nothing at all, they would have a stand-alone lot that is useless. You couldn't do anything with it.

Attorney Sullivan said what the applicant wants to do is put a single-family home lot on the Blackstone lot with an 8½' side setback. He said it will be one garage under, a staircase going up and he also submitted in there a proposed plan, which may not be an exact building plan, but it shows that there is a house here that will fit and actually look nice and look nice with the neighborhood. He said Joseph Wichert placed it on the plan and it works and is actually a nice design. He said the garage in the rear Westminster lot is going to get torn down. It is falling down anyways so it is going to get torn down. There will be parking there and therefore the parking will be in the back.

Attorney Sullivan said they can't change the depth. It is there and it has been there since 1912 as all the lots have been. They can't change the width on the Blackstone lot because there is no way to get to it. The applicant doesn't own those lots. They have a lot of a size that can't be changed. The lot is in a zone that allows a single-family use. It is a reasonable use and can only be achieved through a variance. In terms of the house that was built, that is a two-family on Westminster, that was built before zoning and now there is a 1,500 SF requirement for a lot and it does not have it. It doesn't have it now and it didn't have it then. The lot on Blackstone adds a little bit extra land to it, but it doesn't really have any practical effect. It is just an appendage hanging on there that has no real symbiotic use with the Westminster Street plot.

Attorney Sullivan said what they are asking for is a variance to allow both of these lots as configured on the plan to exist. That is the two-family to exist as is with the parking shown with the garage removed and the single-family on Blackstone Street as shown on the plan. He said he believes it does not alter the essential character of the neighborhood. There are other small lots of not quite, but similar size and certainly, all the lots are only 90' deep. He said there is plenty of room for emergency vehicles that access this property. He said he maintains that the spirit of the Ordinance is observed and the public interest will not be harmed as there is adequate health and safety issues that are positively addressed. The Broker's opinion indicates that it will not devalue the surrounding property lots.

Attorney Sullivan said he and Mr. Wichert were talking and came up with a very good observation. This is the missing link as Mr. Wichert pointed out. It goes from condos to homes. No one is building expandable capes anymore. No one is building small homes anymore. It is all \$600,000.00 and \$700,000.00 new homes in Manchester or \$350,000.00 condominiums. This is something that is needed. He said he envisions in the year to come we are going to see a lot more of this type of lot, and this type of house configuration because it provides what is missing. It adds a positive value. If the variance is denied, it is a big loss to

the applicant because he is stuck with a piece of land that he can't do anything with. It will just be a scrub piece of lot because you can't do anything with it. He said it has no fitting with the house on Westminster. He maintains it meets the spirit of the Ordinance, does not hurt the public welfare and it is an intrinsic hardship on both of them because we can't change the configuration.

Chairman Breault turned the hearing over to the Board.

Chairman Breault said what he witnessed on that Blackstone lot was parking, a walkway and a playground set that satisfies the use of the two-family home. It looks like they have been using it and he asked if he was wrong in his assumption that this is a consolidated use. Attorney Sullivan said it may be, he doesn't know, but with the garage and the parking the way it was, it wouldn't surprise him, but now the garage is going away. He said if you are saying it is a constructive use, he thinks he addressed that in the modified package, and even if it was, they would look either for a waiver of 11.03 if the Board construes it to be a constructive merger or if this variance is granted, they would just have to go to the Planning Board for a subdivision.

Chairman Breault turned the hearing over to the public and invited those in favor of this application to come forward. No one came forward to this request. The Chairman invited those in opposition to this application to come forward.

Rick Carter at 94 Blackstone Street asked if his wife, **Vicki Carter**, could bring a display to the Board to use while he speaks. Chairman Breault said she could. Mr. Carter said he and his wife Vicki reside at 94 Blackstone Street, Lot 91, which is next door to Lot 90 where the new house construction is proposed. He said first of all he wants to make it very clear he is not one of those "not in my backyard" kind of people. He said he believes in property rights and that people should be able to do what they want with their property within reason. What he does question is whether the construction of a home at Lot 90, with all the variances required, is in fact reasonable.

Mr. Carter said in addition to variances for overall square feet, frontage and depth, variances are needed for setbacks on both sides, in the rear and for the distance from parking in the front. However, of most concern to him, is the variance being requested to make this a three-story. He said he is not an architect so he can't promise this is exactly to scale but it will give the Board the general idea of what this will look like from the street. He asked the Board if his wife could approach them with the first display. Mr. Carter said he tried his best to represent what he expects it to look like on this tiny lot. To him, it resembles a row house. It might be appropriate in that setting. Mr. Carter said before he went on any further, he thought he could add a little to the Chairman's question. He said the tenants renting in the Westminster house, park on that property and the jungle gym is theirs.

Mr. Carter said the reason why it has to be a three-story is because the lot is so small. He simply doesn't believe that the lot is suited for construction of a house. The square footage and the frontage are both almost half what the Ordinance requires. That is not a small variance to him. He said he read Attorney Sullivan's variance request and he cites a couple of court cases to support the request. He said he hopes you don't mind if he doesn't name the court cases here as he is not an attorney. His contention is that the construction of a home on

the lot would only violate the letter of the Ordinance, not the spirit. He goes on to point out that the variance would need to violate the Ordinance's basic zoning objectives to justify a rejection. He said he leaves that to you, the Board, to decide on this. However, he then indicated that the variances would need to alter the essential character of the locality. He believes they would.

Mr. Carter said their neighborhood is the top half of Blackstone Street, not the bottom half, not Westminster, nor Dudley, nor Overland. He said he is not badmouthing those areas, but their group of homes on the top half of Blackstone, have a distinct character. It is what attracted them to the neighborhood in the first place. If you would look at the photos that his wife has, of the homes surrounding them, you will see that none of them are crowded together as this home would be. He said also, none of them are a three-story like this one. He expects that it would stand out like a sore thumb. It would be higher than their home at number 94, even though they are uphill. It would absolutely tower over number 82, the McElroy's home and Mr. McElroy is here as well. Furthermore, it will be right on top of both of them.

Mr. Carter said to ask for a reduced setback on one side is one thing, but here it is needed on both sides. To justify building a home on a lot with just 40' of frontage, Attorney Sullivan points to Lots 69 and 69A as well as Lot 97 and 97A, both on nearby streets. As you can see in the maps and the photos here, in both cases, the lots are combined to make one street address with one home. Lot 69 and 69A form street address 80 Dudley Street. Lot 69 has no structure built on it. At one time, there was an above ground pool which is in the satellite photo, but you can see the photo he took today, there is no longer even a pool there, it is all grass. Lots 97 and 97A form street address 75 Westminster Street. There is no free-standing structure on Lot 97, only a carport that is attached to the house. He believes there is a good reason why neither Lot 69A nor Lot 97 has a house built on it. It is the same reason he believes the house should not be built on Lot 90. He said 40' of frontage is simply not enough.

Neil McElroy said he and his wife Meghan live at 82 Blackstone Street, which is on the west side of the vacant lot that is being discussed today. He said they have been at that residence since 2007. Mr. McElroy said all houses on Blackstone Street are built on 3 tracts of land. The lot is two tracts of land so it is definitely smaller. When he and his wife were looking at the house, both real estate agents said that no one can build a house on that lot, only a garage. He said he knows that variances change through the years, but that was back in 2007. From the past experiences he and his wife have had with their property, the future owners will have similar experiences with their property. He said they have a 5' stone basement and if they have a lot of rain, their basement gets flooded and they will have the same problem judging by the picture of the drawings of the house, because he believes they are going to have a 4' crawl space. He said they are asking for trouble.

Chairman Breault invited those with general comments to come forward. No one came forward to this request and Chairman Breault invited Attorney Sullivan to comment on the testimony given.

Attorney Sullivan said the house will be a slap on grade and there will be no crawl space. He said he appreciates all those observations, but he still says there is an intrinsic hardship here. He said he understands that it is slightly less than 90'. Joseph Wichert said they are normally

40' x 90' lots. It is a function of measurement when they measured up the hill going from Overland Street to Calef Road. They are 40' x 90' lots by deed and by plan, and when you physically measure them, they are a hair short, but it is a 40' x 90' lot. Attorney Sullivan said there are lots in the area that are close to or a similar size.

Attorney Sullivan said as to the height, it will meet the no more than 35' requirement. It is construed to be three levels and there is a necessity for a sprinkler system, then that will have to happen. There are plenty of three-story homes in the City. Are they in this area? Honestly, he would have to drive by the area. He said he used to live in that area when he first married, but it was in a ranch, so he couldn't tell you. He said he looks at this and it is just a classic lot. There is nothing else that you can do with it. You would not put a garage in the back like that unless you had a long, long driveway to the back and somehow tie it in. It would not be an attached garage. He said he understands what the abutters are saying, but he maintains there is a hardship here and he thinks the public interest is not an issue because it doesn't affect the health or safety of emergency vehicles. The spirit of the Ordinance does not restrict, it is to regulate. It regulates according to these criteria in the case he mentioned. Does it affect density in that lot? No. Does it affect the density in the whole neighborhood? It is going to be different looking, but many of those houses are small but the overall square footage is not going to be different than many of the houses there.

Chairman Breault turned the hearing back over to the Board.

Chairman Breault said based on testimony, he thinks it is contrary to public interest for the lot on Blackstone Street. He said the lot on Westminster is undersized, although the combination of the three lots is still less than the 15,000 SF required in that zone for a two-family home. He said all three lots have been used in common for years. He doesn't think this is necessarily a hardship. It is there. It is available for their use, regardless if it is on a separate street. It is a tiny lot and he doesn't think it is in the spirit of the Ordinance on something less than 40' wide.

Anne Ketterer said she would like to further note that architecturally, you don't need to build a house this size on this lot. She said tiny lot a tiny home. She said they have a bigger home, not a huge home, but a moderate home on a tiny lot. Regarding the home, there is no reason they couldn't design this as their architect could design a smaller house so they wouldn't need the height in stories variance and they wouldn't need the side yard or rear yard setbacks. That is entirely possible. She said they could take the accessory dwelling unit from the previous case and plop that down. It is just less home for them to sell and make money on, and that is not her problem and that is not the City's problem. The lot does not support this home, albeit pretty. She cannot support these variances.

Attorney Sullivan said in light of what was just said, the applicant would be willing to lessen the dimensions of the house so there would be no side setback issues. He said they can't do anything about the depth and can't do anything about the width. Chairman Breault said so the house would be 19' wide. Attorney Sullivan said you would have a 14' garage. Ms. Ketterer said the house would be akin to something you would see sort of in a city where you have a townhouse. She said you can build a house 16' wide and it's got everything you need. It is just the townhouse setup. Attorney Sullivan said he would be more than willing to work with that. Ms. Ketterer said the issue is that he can't have a house that tall. That is very much out

of the character of the neighborhood, having been in that neighborhood, it really towers over other homes. The other issue is building on this particular lot is if you look at the two adjacent lots on either side of it, those homes are rather close. You have to take into consideration the context of this lot and so it is not just that this lot is undersized and it is just not wide enough, but the houses on either side are relatively close to it. That compounds the problem of homes being too close for comfort. That is why it is just not acceptable for you to come here and ask for any kind of side yard setback at all, in her opinion. It may be the case, indeed, as the Chairman was saying that the lot is just so small that it doesn't support a single-family home or any structure.

Chairman Breault said going back to the criteria, he thinks this is not in the public interest and it is not in the spirit of the Ordinance. He said he thinks it would affect property values and it is not an existing structure, it is an undersized lot to try to build on and as he said before, they have a two-family on Westminster Street that doesn't even come close to satisfying the 15,000 SF requirement. He said if you add this lot on Blackstone Street which has been used continuously with that two-family home, it is still is only 10,781 SF which still doesn't even meet the criteria for the two-family. He said he doesn't see how this is in the spirit of the Ordinance at all.

Vice Chairman Simoneau said he is not in support of this application also. He said given those items just mentioned.

Michael Simoneau made a motion to deny the following variance counts for case ZBA2022-057, 6.02 Minimum Lot Frontage and Width (2 counts) and 6.01 Minimum Buildable Lot Area at Tax Map 544, Lot 96 and 6.01 Minimum Buildable Lot Area, 6.02 Minimum Lot Frontage and Width (2 counts), 6.03(C) Side Yard Setback (2 counts), 6.05 Height in Stories and 10.09(B) Parking Setbacks (2 counts) at Tax Map 544, Lot 90 which was seconded by Anne Ketterer.

Yeas: Breault, Simoneau, Prieto, Guerra, Ketterer
Nays: None

Upon a unanimous vote, the variance was denied.

Attorney Sullivan asked if he could ask an unusual request. He said they were thinking of coming back with this for two-stories. He asked with no bearing whatsoever, what the consensus would be. Would the Board even look at a two-story, 10' side setback building. Anne Ketterer said, didn't we just deny the request for so much more than two-stories. She said we just denied your request. Attorney Sullivan said he understands that, but he is just trying to get a feel from the Board. Anne Ketterer said the Board already denied the request for minimum lot frontage and minimum buildable lot area so the problem is, they would be coming back asking the Board for the same exact variances that they just denied. Attorney Sullivan said it would be a different use. Ms. Ketterer said no it wouldn't because you would still be asking the Board for 6.02 Minimum Lot Frontage and 6.01 Minimum Buildable Lot Area, wouldn't you? Attorney Sullivan said they would but it would be for a different design. Ms. Ketterer said it would be for the purpose of a single-family home, albeit for a different design. She said the Board would be having to reconsider the 6.02 Minimum Lot Frontage and Width (2 counts) and 6.01 Minimum Buildable Lot area and the problem is the Board just

considered it and denied it. She said you can't turn around and ask the Board the same question the next month. Attorney Sullivan said he respectfully disagrees with Ms. Ketterer within the context, but he understands what she is saying. Ms. Ketterer said it is a fair question and she shouldn't be answering it and she asked Mr. Landry if he could answer it. Mr. Landry said it is absolutely this Board's decision, but he would just say that a subsequent request would need to be materially different. He said tweaking one aspect may not satisfy the Board and it is for the Board to decide. He said there is a lot going on there and he thinks that the Board saw that the back lot really complements the two-family, which is an existing non-conforming use. He said you would be exacerbating that non-conforming use and he doesn't mean to comment on it as it is not his place.

Anne Ketterer said she thinks Mr. Landry's explanation was very helpful. She said he clarified the point, which is that of course you can come back and ask the Board to reconsider it. They would just have to find a material difference and as Mike aptly pointed out that one of the considerations when the Board was taking a vote on this, was that the existing two-family, the non-conformance is further deepened. It is worsened and that is something that the Board noted.

Mr. Landry said that concludes the public hearing for this evening. He said we would move on to the business portion of the meeting and its administrative matters. He said next up, we have a request for a rehearing and he read it into record.

III. BUSINESS MEETING:

1. ADMINISTRATIVE MATTERS:

(Request for Rehearing)

15. ZBA2022-002 155 Grand Avenue, R-1B Zoning District, Ward 5

Attorney Andrew Tine (Agent) requests a rehearing of case ZBA2022-002, appealing the decision of the Zoning Board of Adjustment denying the variance and a reasonable accommodation to convert the use of a single family home to a congregate housing use on a lot of 9,000 SF where 15,000 SF is required, with 90' of lot frontage where 150' is required and a 9' side yard setback where 20' is required as per documents submitted through April 12, 2022.

Chairman Breault said if you look at the application on the front page, it is stamped that it was received on April 12, 2022. The date when the decision was made on this application is incorrect. The decision was made on March 10, 2022 at the regularly scheduled hearing. He said that means that they have not satisfied the thirty day requirement by statute that allows them the thirty days to request a rehearing. They didn't meet that criteria. He said the first thing the Board has to do is weigh on whether or not they even want to consider this because it is late.

Anne Ketterer said she thinks the Board can consider it even though it is late. Chairman

Breault said the State statute is very specific. It says thirty days and he states that in his opening statement that they have thirty days to request a rehearing. They did not satisfy the thirty day period to request a rehearing. It was received on April 12, 2022, which is actually thirty-three days. Ms. Ketterer said she agreed with the Chairman but her further point was only that they would deny the rehearing anyway because they just don't meet the definition of family. Chairman Breault said his point is if they don't consider this as a viable request, then they don't even need to consider the rehearing. Ms. Ketterer said she understood and she is in agreement with the Chairman.

Joe Prieto said the issue about dates can be somewhat confusing because the time can run starting from the day after the date to count the thirty days. Chairman Breault said it doesn't matter. He said to count the days and even if you went from April 11, 2022, they are still late. Michael Landry said the thirty days expired on Saturday or Sunday of that weekend, so they got that extra day to the Monday, which would be April 11, 2022 and they submitted on Tuesday, April 12, 2022 so they are clearly outside no matter how you look at it. Mr. Prieto said that was what he was trying to get to, if it was on a holiday. Chairman Breault said April 11, 2022 was not a holiday. Mr. Prieto said then he agrees with the Chairman if it is outside of the thirty days.

Anne Ketterer made a motion to deny the request for rehearing on the basis the applicant did not meet the criteria of the thirty days, which was seconded by Joe Prieto.

Yeas: Breault, Simoneau, Prieto, Guerra, Ketterer
Nays: None

Upon a unanimous vote, the request for rehearing was denied.

Chairman Breault said the rehearing will not be considered based on their exceeding the thirty day period.

1. Review and approval of the ZBA Minutes of February 10, 2022 and March 10, 2022.

Chairman Breault said this evening we have with us four of the Members present that night. He said he read through them and he didn't see anything other than maybe a minor grammatical error.

Anne Ketterer made a motion to approve with amendments, the ZBA Minutes of February 10, 2022 which was seconded by Michael Simoneau.

Yeas: Breault, Simoneau, Guerra, Ketterer
Nays: None

Upon a unanimous vote, the Minutes of February 10, 2022 were approved with amendments.

Joe Prieto abstained from voting as he was not present at the February 10, 2022 ZBA Meeting.

Joe Prieto made a motion to approve with amendments, the ZBA Minutes of March 10,

2022 which was seconded by Michael Simoneau.

Yeas: Breault, Simoneau, Prieto, Ketterer

Nays: None

Upon a unanimous vote, the Minutes of March 10, 2022 the ZBA Minutes were approved with amendments.

Guy Guerra abstained from voting as he was not present at the March 10, 2022 ZBA Meeting.

2. Any other business items from the ZBA staff or Board Members.

No new business was brought up.

Michael Simoneau made a motion to adjourn the ZBA Meeting of May 12, 2022 which was seconded by Anne Ketterer

Yeas: Breault, Simoneau, Prieto, Guerra, Ketterer

Nays: None

Upon a unanimous vote, the ZBA Meeting of May 12, 2022 was adjourned.

<p>Full text of the agenda items is on file for review in the Planning & Community Development Department. The order of the agenda is subject to change on the call of the Chairman.</p>
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